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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No.23/2007

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant
Plaintiff

Goverdhan Gupta
S/o Tejram Gupta,
Aged about 32 years,
Occupation-Agriculture,
R/o village-Rabo,
Tahsil-Gharghora,
District Raigarh (CG)

Versus

Respondents
Defendants

1. Mehattar Das S/o Niranjan Das, Castae-Panika, R/o village Aamapali, Tahsil-Gharghora, District Raigarh (CG)
2. Sandip Sharma S/o K.K. Sharma, Aged about 20 years, R/o Gaurishankar Mandir Road, Raigarh, Tahsil and District Raigarh (CG)
3. Rakesh Sanwal S/o M.L. Sanwal, Aged about 23 years, R/o Gaurishankar Mandir Road, Raigarh, Tahsil and District Raigarh (CG)
4. State of Chhattisgarh, Through: Collector, Raigarh District Raigarh (CG)

Misc. Appeal under Section 104 r/w Order 43 Rule 1 of Code of Civil Procedure, 1908.

Present:-
Shri Santosh Kumar Tiwari, counsel for the appellant.
Shri Akhil Agrawal, PL for the State.

ORAL ORDER

(Passed on 13th June, 2007)

Heard on admission.

2. The appellant is aggrieved by the order dated 06.02.2007 passed in civil suit No.16-A/2006 by the Additional District Judge, whereby the

application under Order-39 Rule-1&2 read with Section 151 of C.P.C filed by the appellant /plaintiff was dismissed.

3. Brief facts are that it was pleaded by the appellant/plaintiff that he, along with Mehattar Das, respondent/defendant No.1 had purchased the suit land jointly by sharing the consideration. However, the sale deed was executed solely in favour of Mehattar Das, defendant No.1. It was further pleaded that on 21.09.2005, an agreement was executed between the defendant No.1 and the appellant/plaintiff for sale of 18 decimals of land out of the land so purchased. An application under Order-39 Rule-1&2 read with Section 151 of C.P.C. was filed by the appellant/plaintiff for grant of temporary injunction.

4. The learned Additional District Judge has, by a well-reasoned order, dismissed the application under Order-39 Rule-1&2 read with Section 151 of C.P.C on the ground that no *prima-facie* case existed in favour of the plaintiff since the plaintiff was not in possession of the suit land on the date of suit and no cogent reason was given as to why despite sharing of the consideration the name of the appellant/plaintiff was not included in the sale deed as a purchaser. Even the document '*Ikrarnama*' dated 21.9.2005 did not show that possession of the land was delivered to the appellant/plaintiff.

5. In this view of the matter, the rejection of application under Order-39 Rule-1&2 read with Section 151 of C.P.C is well merited. The appeal being devoid of any merit is dismissed at the stage of admission.

6. In view of the above, I.A. No. 1, for ad-interim relief also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya